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No. 466 Misc.

BRIEF FOR RESPONDENT, KATHERINE M. DRIER,
IN OPPOSITION

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IN THE

# Supreme Court of the United States

October Term, 1947

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BENNY BITCHER (ABON),

*Petitioner,*

vs.

KATHERINE M. DRIER, HAROLD G. ABON, MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, STERN BROS., BONWIT-TELLER, GREAT LAKES STEEL COMPANY, AND HENRY MORGENTHAU, JR.,

*Respondents.*

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA*

---

BERNARD J. GALLAGHER,
M. WALTON HENDRY,
J. ROY THOMPSON, JR.,

*Attorneys for Respondent, Drier.*

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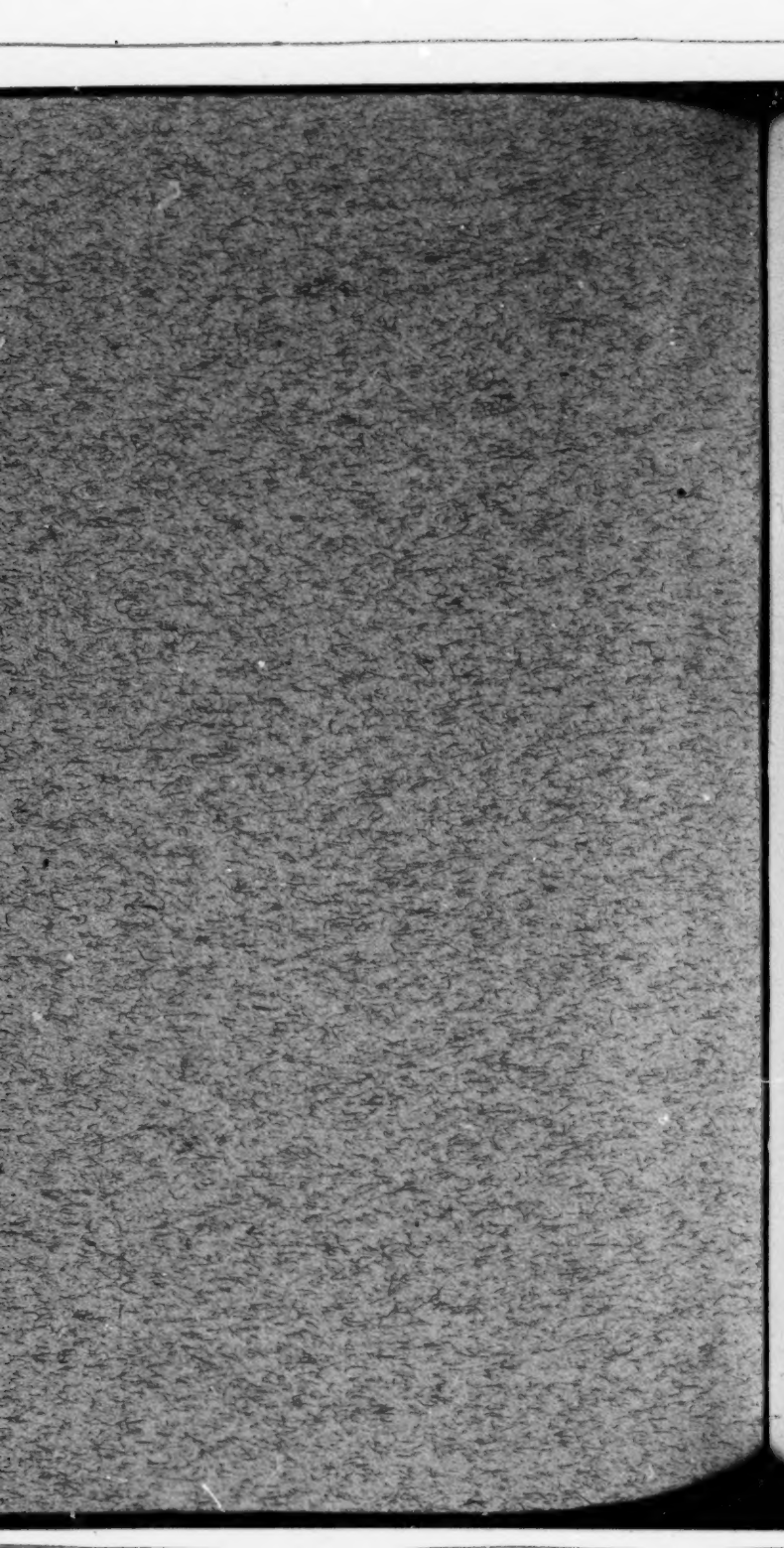

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IN THE

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## BRIEF FOR RESPONDENT, KATHERINE M. DRIER, IN OPPOSITION

### OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia is reported at 165 Fed. (2d) 238 Advance Opinions.

## JURISDICTION

The order of the United States Court of Appeals for the District of Columbia was entered December 8, 1947, affirming a judgment of the United States District Court for the District of Columbia, dated November 15, 1946. The petitioner's first petition for re-hearing in the United States Court of Appeals for the District of Columbia was denied January 7, 1948, and petitioner's second petition for rehearing was denied February 11, 1948. The petition for a writ of certiorari was filed on April 21, 1948. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. Section 347 (a)).

## STATUTE INVOLVED

Private Law 509, 76th Congress, Third Session, approved July 19, 1940 (54 Stat. 1341).

## QUESTIONS PRESENTED

1. Whether a contract by an attorney to procure from Congress the passage of "favor" legislation upon a contingent fee basis, is void as against public policy.

2. Whether there is a conflict between the opinion of the United States Court of Appeals for the District of Columbia in the instant case, on the one hand, and the United States Supreme Court in *Steele* v. *Drummond* 275 U. S. 199, 48 S. Ct. 53, 72 L. Ed. 238 and *Ewing* v. *National Airport Corp.* 115 Fed. (2d) 859, on the other hand.

All the other questions presented by the petitioner are extraneous for the reason that, as found by the United States Court of Appeals for the District of Columbia, the claims of petitioner are derivative and depend solely upon

the existence of a valid contract to procure favor legislation on a contingent fee basis.

## STATEMENT

The petitioner's claim in this case is derivative. She is the divorced wife of one Aron. Aron, an attorney, acted for respondent, Drier, in procuring the passage by Congress of Private Law No. 509, upon a contingent fee basis, viz., a sum equal to twenty-five per cent (25%) of the amount recovered. Petitioner herein claims an interest in Aron's contingent fee. Other than that she has no claim against respondent Drier (Rec., Opinion of the United States Court of Appeals for the District of Columbia). Private Law 509 was "favor" legislation. (Rec., Opinion of the United States Court of Appeals for the District of Columbia).

## ARGUMENT

The question involved here has been decided many times by this Court and by other Courts, all of whom have uniformly held that such a contract as is involved here is void as against public policy.

This Court said in *Providence Tool Company* v. *Norris*, 2 Wall. 45, 54, 55, 17 L. Ed. 868:

> "Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception. There is no real difference in principle between agreements to procure favors from legislative bodies, and agreements to procure favors in the shape of contracts from the heads of departments. The introduction of improper elements to control the action of both, is the direct and inevitable result of all such arrangements."

This statement of the law was approved by this Court in *Crocker* v. *United States* 240 U. S. 74, 38 S. Ct. 245, 60 L. Ed. 533. Indeed the approval of the rule, in this class of cases, seems to be without exception. *Trist* v. *Child* 88 U. S. 441, 21 Wall. 441, 22 L. Ed. 623; *Meguire* v. *Corwine* 101 U. S. 108, 25 L. Ed. 899; *Oscanyan* v. *Winchester Repeating Arms Company* 103 U. S. 261, 273, 26 L. Ed. 539; *Sage* v. *Hampe,* 235 U. S. 99, 105, 35 S. Ct. 94, 59 L. Ed. 147.

Petitioner contends, however, that there is a conflict between the decision of the United States Court of Appeals for the District of Columbia in this case and the decision of the Supreme Court of the United States in *Steele* v. *Drummond,* supra, and in the decision of the Fourth Circuit Court of Appeals in *Ewing* v. *National Airport Corp.,* supra. It is perfectly apparent from reading these cases that they are not in conflict: On the contrary, they are in harmony with the decisions of the United States Court of Appeals for the District of Columbia in the instant case.

In the case of *Gesellschaft* v. *Brown,* 64 App. D. C. 357, 78 Fed (2d) 410, cited by the United States Court of Appeals for the District of Columbia in the instant case, the United States Court of Appeals for the District of Columbia cited the Supreme Court cases of *Crocker* v. *United States,* supra; *Trist* v. *Child,* supra, *Meguire* v. *Corwine,* supra, *Oscanyan* v. *Winchester Repeating Arms Company,* supra, and *Sage* v. *Hampe,* supra, in support of its opinion that contracts for the procuring of favor legislation on a contingent basis were void as against public policy. In *Steele* v. *Drummond,* supra, this Court held that the contract in the case of *Steele* v. *Drummond* is to be distinguished from those dealt with in *Providence Tool Company* v. *Norris,* supra, *Trist* v. *Child,* supra, and other cases, supra, relied upon by the United States Court of Appeals for the District of Columbia in support of its opinion that contracts for securing favor legislation on a contingent basis were

void as against public policy; and, in referring to these same cases, this Court stated in *Steele* v. *Drummond*, supra, as follows:

> "The claims there considered were under contracts requiring or contemplating the obtaining of legislative or executive action as a matter of favor by means of personal influence, solicitation and the like, or by other improper or corrupt means."

This statement of this Court in the case of *Steele* v. *Drummond*, supra, is in harmony with the decisions of the United States Court of Appeals for the District of Columbia, in the instant case, in holding that contracts which required or contemplated obtaining favor legislation on a contingent basis are void as against public policy. The fact that this Court held in the case of *Steele v. Drummond*, supra, that the contract in that case was to be distinguished from the contracts in the cases relied upon by the United States Court of Appeals for the District of Columbia in the instant case and hereinbefore cited, conclusively shows that this Court itself has already held that there was no conflict between the decision of this Court in *Steele* v. *Drummond* and the opinion of the United States Court of Appeals for the District of Columbia in the instant case. In the case of *Steele* v. *Drummond*, this Court specifically held that the contract in the *Drummond* case was to be distinguished from contracts for obtaining favor legislation on a contingent fee basis, for the reason that Drummond was not employed to secure the passage of the legislation. In this respect, this Court stated in the case of *Steele* v. *Drummond*:

> "But this case is different. Drummond was not employed by Steele or by the railroad company to secure the passage of the ordinances. He was interested as an owner of property. Neither the contract, nor what was done, suggests that the location or construction of the proposed line was not a legitimate enterprise undertaken for the public good, or that anything improper was contemplated as a means to secure the passage of the ordinances."

Neither is there any conflict between the decision of the United States Court of Appeals for the District of Columbia in the instant case and the case of *Ewing* v. *National Airport Corp.*, supra. In that case the Court held that because the plaintiff in securing the passage of the legislation in question used personal and political influence, the contract for such employment was void as against public policy. The decision of the United States Court of Appeals for the District of Columbia in the instant case does not hold to the contrary but, on the other hand, likewise holds that such contracts are against public policy and void. As further proof of the lack of conflict, the Circuit Court of Appeals for the Fourth Circuit, in the *Ewing* case, supra, cited the opinion of the United States Court of Appeals for the District of Columbia, in the case of *Gesellschaft* v. *Brown*, supra, the same case relied upon by the United States Court of Appeals for the District of Columbia, in the instant case and, also, cited the case of *Providence Tool Company* v. *Norris*, supra, which case was likewise cited with approval by the United States Court of Appeals for the District of Columbia in the case of *Gesellschaft* v. *Brown*, supra.

Thus it will be seen that this Court itself has by implication held that there was no conflict between the decision of the United States Court of Appeals for the District of Columbia in the instant case and its decision in the case of *Steele* v. *Drummond*, supra, by actually distinguishing the case of *Steele* v. *Drummond* from the cases relied upon by the United States Court of Appeals for the District of Columbia in the case of *Gesellschaft* v. *Brown*, supra. Not only that, but the United States Court of Appeals for the District of Columbia cites with approval and relies upon the decision of this Court in the case of *Steele* v. *Drummond*, supra; and, in the case of *Ewing* v. *National Airport Corp.*, the Circuit Court of Appeals, Fourth Circuit cited with approval the opinions of the United States Court of Appeals for the District of Columbia in *Gesellschaft* v. *Brown*, supra, and cases therein cited, all of which shows that there

is complete harmony and no conflict whatsoever between the decisions of the United States Court of Appeals for the District of Columbia and the cases of *Steele* v. *Drummond* and *Ewing* v. *National Airport Corp.*, supra.

Finally, it will be noted that the petitioner in the instant case has failed to notify this Court that in the case of *Gesellschaft* v. *Brown*, supra, an application was made to this Court for a writ of certiorari but the writ was denied 296 U. S. 618, 80 L. Ed. 439, rehearing denied, 56 S. Ct. 169, 296 U. S. 663, 80 L. Ed. 472. The contract in the case of *Gesellschaft* v. *Brown* was identical with the contract in the instant case; that is to say, a contract to obtain favor legislation upon a continget basis; and the United States Court of Appeals for the District of Columbia cited the case of *Gesellschaft* v. *Brown*, supra, in support of its opinion in the instant case.

It is clear, therefore, that the same question involved in the instant case has previously been submitted to this Court on a petition for writ of certiorari, and the writ was denied.

## CONCLUSION

The decision below is clearly correct and there is no conflict. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

BERNARD J. GALLAGHER,
M. WALTON HENDRY,
J. ROY THOMPSON, JR.,

*Attorneys for Respondent, Drier.*

## APPENDIX

**Statute:**

Private Law 509, approved July 19, 1940:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding the provisions of section 4(c) of the Settlement of War Claims Act of 1928, the Secretary of the Treasury is hereby authorized and directed to pay, out of the German special deposit account in the Treasury of the United States, to Katherine M. Drier, an American citizen, formerly resident in Germany, the sum of $160,000, together with interest thereon at the rate of 5 per centum per annum from January 1, 1920, being the amount due said Katherine M. Drier pursuant to an agreement between the United States of America and the German Government under which all the claims of said Katherine M. Drier against the German Government were settled and adjusted: Provided, That payment of such sum of $160,000 and interest thereon as herein provided shall be made as if an additional award in the sum of $160,000 with interest at 5 per centum per annum from January 1, 1920, had been entered by the Mixed Claims Commission, United States and Germany, on behalf of Katherine M. Drier.

"Approved July 19, 1940."

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*Respondents.*

## BRIEF OF RESPONDENT ARON IN OPPOSITION TO PETITION FOR CERTIORARI

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In The

# Supreme Court of the United States

October Term, 1947

No. 466, Misc.

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*Respondents.*

## BRIEF OF RESPONDENT ARON IN OPPOSITION TO PETITION FOR CERTIORARI

### THE PETITION

The petition filed in this Court contains, among others, the false, misleading and wholly unsupported statements quoted and discussed below.

(1) "On March 22, 1934 Petitioner delivered her patrimony of $18,000 in mortgage certificates to her estranged husband, Harold G. Aron, a New York lawyer, and received in return therefor an assignment of $25,000 * * *. The $25,000 was a legal fee due Attorney Aron from his client, appellee Katherine M. Drier, for services performed in recovering compensation for

certain lost properties through the Mixed Claims Commission, United States and Germany * * *" (Petition, p. 2).

These statements are misleading and not in accordance with facts. The actual transaction was a delivery back to respondent Aron for the purpose of procuring a loan thereon for petitioner's benefit of certain mortgage certificates he previously had given petitioner. These certificates were lost solely through petitioner's own action, which resulted also in an additional loss to Aron who also had pledged collateral of his own to secure the loan for her. (R. p. 164)

The assignment referred to was signed by respondent Aron and recited that

> "I * * * hereby assign to Marshall McLean the sum of Twenty-five Thousand ($25,000) Dollars, out of monies due and payable to me upon the collection of certain awards of the Mixed Claims Commission, United States & Germany, to Katharine M. Drier * * * and on the receipt of said monies or any part thereof I agree to immediately transfer and pay over the same to MARSHALL McLEAN to be disbursed as herein set forth.
>
> "MARSHALL McLEAN is hereby irrevocably authorized, empowered and directed to pay out of the monies so received, the total amount, if any, then owing by me to the Title Guarantee and Trust Company on a certain loan of even date herewith in the amount of not exceeding Five Thousand Dollars secured by certain mortgage certificates of the Title Guarantee and Trust Company standing in the name of BETSY RITCHIE ARON, * * *
>
> "From and out of the remaining amount in the hands of the said Marshall McLean, he is irrevocably authorized, empowered and directed to pay to the said Betsy Ritchie Aron the sum of Thirty-five Hundred Dollars in cash.

"The remaining proceeds the said Marshall McLean is irrevocably authorized, empowered and directed to keep on deposit in the form of a certificate of deposit, and to pay (to Petitioner) therefrom and from any interest accruing thereon the sum of Six Hundred ($600.00) Dollars per month. * * *" (R., p. 29)

The assignment referred to related to fees arising from awards of the Mixed Claims Commission, United States and Germany. The funds on deposit in the registry of the District Court of the United States for the District of Columbia (except as to $8,975.80) became due and payable to respondent Katharine M. Drier under a special act of Congress approved July 19, 1940 (Private Law No. 509, 76th Congress), over six years after the assignment of March 22, 1934, relied upon by petitioner was made. (R., p. 21, 29, 83)

(2) "The fee in question is included in the amount of $49,497.32 which has been paid into the Registry of the Court below by the Secretary of the Treasury of the United States and is there impounded." (Petition, p. 2)

As above shown, this statement is not true. The assignment relied upon by petitioner did not, and, of course, could not relate to a fee which arose from legislation enacted by Congress six years after the assignment was made and which was not even thought of or contemplated by any of the parties to the assignment when it was made.

(3) "Attorney Aron and respondent Drier attempt to avoid the effect of the assignment by collusively contending that the fee agreement between Aron and his client, Drier, is void as against public policy on the ground that it is for obtaining allegedly so-called 'favor' legislation." (Petition, p. 2. See also par. 5, p. 5).

This statement is utterly false. This respondent has never contended that his contract with respondent Drier is void as against public policy or that Private Law No. 509, 76th Congress, is "favor" legislation. On the contrary,

he always has contended and still contends that his contract was valid and enforceable and that the private act of Congress in question was not favor legislation. On September 12, 1941 he brought suit in the District Court of the United States for the District of Columbia against said Katharine M. Drier to recover for his legal services in procuring the enactment of said private act and for other services, which legal proceeding was pending at the time of the making of the agreement of May 2, 1945, between respondent Aron and said Katharine M. Drier, mentioned in the opinion of the United States Court of Appeals for the District of Columbia. (R. p. 165) In that suit, respondent Drier urged and relied upon the defense that this respondent's agreement was a lobbying contract and, therefore, unenforceable. That question was a live and bitterly contested one between Aron and Drier for nearly four years and was settled only by the agreement of 1945, which rendered the question moot.

> (4) "By reason of the loss of her aforesaid patrimony and the failure of appellee Aron to pay support money and alimony in excess of $50,000, exclusive of interest, petitioner is in dire financial circumstances and of necessity presents this petition in forma pauperis". (Petition, pp. 2 and 3).

The statement in effect that this respondent is in arrears in the payment of support and alimony more than $50,000 finds no support in the record and is not true. Petitioner has no one to blame but herself for being a pauper, if she is one. She has refused constantly since 1946 to accept $15,000 and dispose of the sequestration proceeding brought by her without waiving one dollar of any claim or surrendering any right or claim of right she chooses to assert against Aron. (R., pp. 51-54, 175). Furthermore, respondent Aron, upon the filing of an action by petitioner in the courts of Connecticut against him, offered to make a settlement with petitioner in exact accord with the demands of her complaint, which she has refused to accept. (R., p. 175)

(5) "Affidavits of petitioner and appellee Aron * * * are in themselves sufficient to make a Court issue of the proposition that the assignor (Aron) and assignment debtor (Drier) are conspiring for the purpose of avoiding payment to this petitioner (Ritchie) and later contemplate an adjustment between themselves." (Petition, par. 5, p. 8)

This statement is unsupported by any competent portion of the record and seems to be a figment of the warped imagination of an overzealous young attorney apparently handling his first controversial case, who admitted in his petition for rehearing in the court below that he was unfamiliar with the facts involved. (R., pp. 154, 161) He assumes, apparently, the role of mind reader in alleging that Aron and Drier later contemplate an adjustment between themselves. Crystal gazing and prophesies therefrom are not convincing as arguments in legal controversies.

(6) "Petitioner's New York divorce decree from appellee Aron recognizes petitioner's interest in the fund now in court and in effect incorporated it as a part of the property settlement, yet assignor Aron and client Drier attempt to ignore petitioner and enter a new contract regarding said fund. Notwithstanding this, appellees Aron and Drier undertook to contract to alter the nature of this petitioner's interest in the fund * * *." (Petition, par. 6, p. 9).

The divorce decree was entered in the Supreme Court of the State of New York on June 30, 1942. (R. p. 27)

In paragraph 1 of her answer and counter-claim, filed in the District Court of the United States for the District of Columbia, on September 23, 1943, petitioner alleged:

"That by reason of an attorney's lien acquired by the defendant, Harold G. Aron, for certain services rendered to the plaintiff, Katharine M. Drier, and a certain assignment from the said plaintiff to the said Harold G. Aron, he, the said Harold G. Aron, became entitled to a large sum of money out of certain awards made and to be made by the Mixed Claims Commission, United States and Germany * * *." (R. p. 24, 25)

In paragraph 2 of her cross-claim against respondent Aron, filed in said Court, petitioner alleges

> "That on the 3rd day of February, 1933, the Supreme Court of New York awarded to the defendant, Betsy Ritchie, a separation from bed and board on the ground of abandonment by the said defendant, Harold G. Aron, and ordered him to pay to her the sum of $600.00 per month for the support and maintenance of the defendant, Betsy Ritchie, and their daughter, during her natural life". (R. p. 26)

Nowhere in the record before the Court below has this respondent found any claim by petitioner that any of her alleged rights or interests in the fund in the registry of the District Court stem from the final decree of divorce granted to her on June 30, 1942. On the contrary, she relies on the assignment of March 22, 1934, the facts concerning the making of which appear in the record at pages 163-5 and on the judgment of separation from bed and board. Therefore, her attempt to inject into this controversy at this late date the alleged failure on the part of the courts below to give full faith and credit to the divorce judgment is a belated effort to have this Court grant certiorari ostensibly to review an alleged constitutional question which never was raised in the courts below and which, in reality, is not involved in this litigation. The record discloses (R. p. 61, 62) that petitioner referred to a judgment entered against this respondent in 1937 in the New York court for approximately $16,000 without notice, and which, therefore, under the decision of this Court in *Griffin* v. *Griffin,* 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635, decided February 25, 1946, is void and not entitled to full faith and credit even if sued upon directly in another jurisdiction and not brought in collaterally, as in this case. On the strength of that void judgment, petitioner obtained an order of sequestration and procured her appointment as receiver to take over property and assets of respondent Aron. The purported New York divorce decree, for rea-

sons stated by this Court in *Griffin* v. *Griffin, supra,* is not entitled to full faith and credit in the District of Columbia or any State of the Union.

> (7) "Appellee Aron is admittedly in arrears over $50,000 exclusive of interest in payments of support money to petitioner under New York decrees and defends in part on an alleged Mexican divorce decree. The loss of this money and the assumption by petitioner of Aron's just and fair family obligations has pauperized her." (Petition, par 7(a), p. 9)

There is nothing in the record to show that respondent Aron "is admittedly in arrears over $50,000". On the contrary the record shows that petitioner has failed to give this respondent credit on alimony and support accounts for thousands of dollars paid out by respondent Aron for petitioner and for their daughter in addition to monthly payments made by him and valuable property delivered to petitioner by Aron. (R. p. 168) Furthermore, petitioner, as above shown, repeatedly has refused to make any definite settlement agreement with respondent Aron, even on the basis of the cause of action alleged to be set forth in her complaint in litigation brought in Connecticut.

> (8) "The assignment of the fund now in the District of Columbia Court was in part to have secured petitioner's support money and income." (Petition, par. 7(b), pp. 9 and 10)

As hereinabove shown, the fund deposited in the registry of the District Court of the United States for the District of Columbia was not in existence at the time of the making of the 1934 assignment relied upon by petitioner. Therefore, it could not have been assigned in part to secure petitioner's support money and income.

> (9) "The collusiveness of the relationship between assignor Aron and the assignment debtor Drier in their attempt to defeat petitioner's claim on the funds now in court." (Petition, par 8(c), p. 10).

The record discloses that on September 12, 1941 (R. p. 16), respondent Aron brought suit against respondent Drier in the District Court of the United States for the District of Columbia for professional services in the amount of $250,000, and that respondent Drier filed a bitter and acrimonious answer. Until the making of the settlement agreement of May 2, 1945, relations between respondent Aron and respondent Drier were bitter, and are now restrained and formal. (R. p. 16, 165)

The briefs, petitions and motions filed in the courts below on behalf of petitioner are replete with unfounded charges of conspiracy and collusion on the part of respondents Aron and Drier. Petitioner and her counsel have used legal documents and briefs filed in court as vehicles for libeling respondent Aron and unwarrantably assailing his reputation and standing. Those practices are continued in the petition now before this Court, apparently in the hope of arousing the sympathy or wrath of the justices of this Court in such manner as to be of some benefit to petitioner. Resort has been had to half-truths and bald misstatements, as above shown. Present counsel for petitioner apparently has been carried away by the tales of domestic infelicity related to him by petitioner. In no other way can his apparent departure from the usual manner of the ethical lawyer be accounted for. It is with regret and reluctance that counsel for respondent Aron has considered necessary the use of language rarely employed by him in legal or other papers, yet that seems to be the only way of bringing forcibly enough to the attention of this Court the apparently deliberate attempts to belittle, besmirch and deride respondent Aron, a lawyer of high standing, in spite of such attacks, in the State of New York and a respected member of the bar of this Court. The record discloses that the petitioner first began her litigation against this respondent about 1931; that she has litigated her supposed grievances in all the courts of the State of

New York having jurisdiction, all the courts of the District of Columbia having jurisdiction, and recently began a suit against Respondent Aron in the courts of Connecticut. In all there have been between 250 and 300 occasions on which such litigation has been before the courts mentioned. More than thirty judges have written or participated in decisions made in such litigation. Petitioner has been represented by twenty-four different lawyers whose names respondent Aron can now recall. Opinions are reported in seven different volumes of the official reports of the State of New York. (R. pp. 162, 163) This respondent feels that there should be an end to the litigious efforts of petitioner. He has made repeated efforts to settle finally the money demands made upon him by petitioner. Settlements have been agreed upon, only to be repudiated by petitioner before they could be carried out. (R. pp. 174, 175)

## PETITIONER'S BRIEF

### Validity of Fee Contract

Petitioner devotes considerable space in the brief supporting her petition, under the heading "Summary of Argument", to a discussion of the question of the legality of contracts for procuring the enactment of so-called "favor" legislation (Petitioner's Brief, pp. 12-19). It appears that this is not a summary, but petitioner's argument itself.

Counsel for respondent Aron deems unnecessary the discussion of this question on its merits, for the reason that the comment by the United States Court of Appeals for the District of Columbia thereon was wholly unnecessary to its decision, is, therefore, obiter dicta, and has no force, either as a decision or as a precedent. As pointed out above herein, at the time of the making of the assignment relied upon by petitioner, the fund in the registry

of the District Court did not exist, no one then knew or thought of the enactment of legislation creating the fund over six years after the assignment was made, and the assignment did not purport to include fees earned or accruing after the making thereof, but related specifically to "moneys due and payable to me (respondent Aron) upon the collection of certain awards of the Mixed Claims Commission, United States & Germany, to Katharine M. Drier * * * referred to in two (2) certain reports to the President of the United States, dated respectively June 20, 1933 and July 19, 1933 * * *" (R. p. 29). The fees assigned were contingent upon payment of the awards referred to in the two reports to the President. Those fees never became due, because the effort wholly failed and no part of the contemplated contingent fees was earned, much less paid. Since the assignment relied upon by petitioner did not relate to the fees involved, the question of whether the agreement between respondents Aron and Drier was a lobbying contract was not, therefore, properly before the court below for decision. If a final decision as to an apparent conflict between the Second and Fourth Circuits on this subject is desirable, this would be a most unfortunate case in which to render it. The services rendered by Aron were totally unique, and the situation involved was completely novel, without precedent and without the probability of recurrence. A case *sui generis* is a poor basis for *stare decisis*.

Since the assignment relied upon by petitioner did not cover or apply to any part of the fund paid into the registry of the District Court, it was not necessary for the Court of Appeals to consider or express an opinion on the validity of respondent Aron's fee contract with respondent Drier relating to procuring the enactment of Private Law No. 509.

## ASSIGNMENT OF FUTURE EARNINGS

In Point 2 of her brief, petitioner argues that respondents Aron and Drier are estopped from rescinding their fee agreement and making a new contract, and that a valid assignment may be made of a contingent debt, or future earnings or profits (Petitioner's Brief, pp. 19, 20).

This argument is inapplicable, because, as shown above, the assignment relied upon by petitioner did not purport to and could not by its terms relate to the fund in the registry of the District Court.

Also, there has been no rescission of the fee agreement between respondents Aron and Drier. The 1945 agreement between them confirms the existence of the original agreement. Neither party surrendered any right thereunder. The only real change in the situation was that the 1945 agreement substituted arbitration for litigation of the controversies involved and provided for the resumption of the relation of attorney and client to a specifically limited extent.

## ALLEGED RECOGNITION OF ASSIGNMENT IN DIVORCE DECREE

Point 3 of petitioner's brief is devoted to a discussion of the application of the full faith and credit clause of the Constitution to the New York decree of absolute divorce between petitioner and respondent Aron. (Petitioner's Brief p. 20, 21.)

In paragraph 2 of her cross-claim against this respondent, filed in the court of first instance below, petitioner states that on February 3, 1933, the Supreme Court of New York awarded her a separation from bed and board, and directed respondent Aron to pay her $600.00 per month. In paragraph 6 of the same pleading, petitioner

asserts that respondent Aron failed to pay her the $600.00 per month, but she fails to allege the amount due. In paragraph 7 of that document, petitioner alleges that "on the 30th day of June, 1942" she "was awarded an absolute divorce from the defendant, Harold G. Aron, by the Supreme Court of New York, and was given permission to resume her maiden name * * *". No mention is made of any money award to petitioner in the final decree of divorce nor are its terms set forth. In paragraph 8 of the same pleading, petitioner alleges that "On the 4th day of August, 1939, the defendant, Betsy Ritchie, caused to be personally served upon the plaintiff, Katharine M. Drier, a photostatic copy of the aforegoing assignment, executed by the said defendant, Harold G. Aron, on the 22nd day of March, 1934." (R. p. 28)

The record fails to disclose the reason for the delay of more than five years in serving a copy of the assignment of 1934 on respondent Drier.

From the foregoing, it appears forcefully that petitioner, until she reached the United States Court of Appeals for the District of Columbia, placed no reliance whatever upon the terms of her divorce decree of June 30, 1942, as having any real bearing upon her right to claim a part of the fund involved in this litigation. She now injects the full faith and credit question into the case only because, in response to an affidavit filed on behalf of respondent Aron in opposition to her petition for rehearing, she filed an affidavit and attached thereto a copy of the final decree of absolute divorce in New York. The decree is not a part of the record now before this Court. The full faith and credit question was not presented to the courts below for decision, and, as shown above, is not involved in this proceeding, except as it is attempted to be dragged in now by petitioner for whatever it is worth. Moreover, it is foreclosed by the decision in *Griffin* v. *Griffin, supra.*

Elementary reasoning alone is sufficient to demonstrate that a litigant cannot, willy nilly, inject into a case on appeal constitutional questions not raised in the court below and have them decided by an appellate tribunal. To permit such practice would not only be unfair to the lower courts, but would unduly prolong and render litigation burdensome and uncertain.

In the second paragraph of Point 3 of Petitioner's brief the statement appears that "The purpose of the Constitution is to extend the res adjudicata effect of a judgment of one state to all other states." No authority for that statement is cited. It is not an accurate statement as to any judgment, much less one over which the court rendering it retains the power to alter, amend or rescind, as is the case of alimony decrees and divorce judgments in New York by statute, by decisions of its highest court and as well of this Court. *Griffin* v. *Griffin, supra,* in which this Court, among other things, said:

> "We have examined the New York law, and conclude that the 1926 New York alimony decree was, under the New York practice, subject to some power of modification nunc pro tunc as to alimony accrued but unpaid up to the time of modification. See New York Civil Practice Act, Sec. 1170; Laws 1925, c 240. * * *
>
> "Concededly the 1938 judgment was entered without actual notice to or appearance by petitioner, and without any form of service of process calculated to give him notice of the proceedings. * * * Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment in personam against him. * * *
>
> "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when

sued upon in another jurisdiction. National Exch. Bank v. Wiley, 195 US 257, 49 L ed 184, 25 S Ct 70; Old Wayne Mut. Life Asso. v. McDonough, 204 US 8, 23, 51 L ed 345, 351, 27 S Ct 236; Baker v. Baker, E. & Co., 242 US 394, 401, 61 L ed 386, 391, 37 S Ct 152. *Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process.* Am Law Inst Restatement, Judgments, Sec. 11, Comment c. * * * By Sec. 1170 of the New York Civil Practice Act, petitioner was afforded the opportunity to move to modify the alimony decree nunc pro tunc. The right afforded by that section is a substantial one, and may, under the law of New York, be exercised by him, in effect by way of defense, in addition to the defense of payment, in a proceeding begun by his wife to docket a judgment for accrued alimony. * * *" (Italics supplied)

## PUBLIC POLICY

By Point 4, petitioner attempts to inject into this proceeding another new question, that of public policy as related to domestic relations. (Petitioner's Brief, pp. 21, 22)

Without citation of authority, judicial or otherwise, petitioner deals in generalities, expands without foundation whatever the alleged amount due from respondent Aron for support from $50,000 to "over $53,000, exclusive of interest", draws a parallel between the parties concerned, falsely states that respondent Aron has "completely controlled for twenty years" the "litigation and business affairs" of respondent Drier, when the record before this Court plainly shows that such allegations are wholly without foundation and contrary to the facts. Petitioner further falsely states that "The parties opposed to the appellant are so allied, fused, and affiliated that it is scarcely fair to say that the rights of the appellant are purely derivative." (Petitioner's Brief, p. 22)

This respondent heretofore has pointed out the portions of the record demonstrating that for the past six or more years discord and disagreement have existed between this respondent and respondent Drier. The agreement of May 2, 1945, is of limited scope only, so far as re-employment of this respondent as counsel is concerned. Its purpose was the elimination of disputes of several years duration then existing, and the resumption by respondent Aron of a limited representation of respondent Drier, and not the general representation of her interests and affairs. Petitioner continually misrepresents the relationship between respondent Aron and his client Drier, and apparently attempts to cast a sinister glow, tainted by deceit, chicanery, conspiracy, corruption and collusion on the efforts of respondent Aron fairly and properly to represent a client, as he is in duty bound to do. If there were the slightest substance to petitioner's allegations of collusion, they would involve not only respondents Drier and Aron, but also the Secretary of the Treasury and the Attorney General of the United States. If petitioner labors under the delusion of conspiracy, some of her numerous counsel should have advised her of her proper remedy in an independent suit to enjoin respondents Aron and Drier from proceeding under the agreement of May 2, 1945.

This respondent has been hounded by litigation, slurs, aspersions, calumnies, and castigations by petitioner and her numerous attorneys since 1931. Necessarily, in defending himself from these groundless, vicious, and unwarranted attacks by a clever woman and her lawyers, respondent has spent thousands of dollars in fees, court costs and expenses, and has devoted countless hours, days, weeks and months, not to say many sleepless nights, of his time and considerable of his legal skill and ability in meeting them. From indications clearly shown by the record before this Court, he probably will spend the restof his life warding off such vindictive thrusts. He hopes, however, that the litigious efforts of petitioner soon will be spent. An ex-

amination of the briefs, motions and affidavits filed by and on behalf of petitioner clearly demonstates that by her efforts, begun in the District Court of the United States for the District of Columbia, this legal proceeding has been caused to degenerate into a sordid exhibition of the venting in written form of a pent up hatred and vindictive desire for revenge harbored and nurtured through the years by petitioner against this respondent. Counsel for this respondent is not accustomed to the conduct of legal proceedings in the manner indicated by the record before this Court and restrained his client and himself refrained from filig any brief, memorandum or other instrument even mentioning or noticing the unfounded, scandalous accusations against respondent Aron until human nature could bear no more, when he reluctantly consented to the filing of this respondent's affidavit in opposition to petitioner's petition for rehearing in the Court below (R. pp. 159-176). Counsel regrets the necessity for the reading by this Court of such papers as are found in the record in this case, but since the petition for certiorari and supporting brief of petitioner herein are replete with misstatements, scurrilous innuendoes, and slanderous accusations of collusion, conspiracy and fraud against this respondent and respondent Drier, he has felt justified in resorting to plain language in this brief, for which he asks the indulgence of this Court.

If public policy dictates that the conduct of litigation on the plane and in the manner pursued by petitioner shall receive the sanction, approval and ratification of courts of justice, then this respondent and his counsel have long since misconceived and misapplied the ethics of a supposedly honorable, dignified and respected profession.

## THE SUMMARY JUDGMENT

By Point 5, petitioner contends that where a substantial controversy exists as to material facts, summary judgment is improper. (Petitioner's Brief, p. 22)

With this proposition of law there can be no dispute. However, as between respondent Drier, the proponent of the motion for summary judgment, and petitioner, the record discloses the existence of no material controverted facts. No such facts are pointed out by petitioner. Instead, adversion is made to extraneous questions of good faith, clean hands, and the relationship of attorney and client.

There is no merit in this point.

## STATEMENT OF POINTS

By Point 6, petitioner contends that the doctrine of clean hands, upon which she now attempts to rely, was presented to the Court of first instance, when, as a matter of fact it was not specified in the "statement of points." (Petitioner's Brief, pp. 23, 24) This the Court of Appeals so found in the last sentence of its opinion. That finding will not and properly should not be disturbed in the absence of compelling reasons therefor. Such reasons clearly are not shown to exist by petitioner.

Reference to Rule 75 (d) springs from the mendacious duplicity of petitioner's prior counsel in contending on the argument before the Court below that the agreement made in 1941 between the Secretary of the Treasury, Drier and Aron to withhold a portion of the funds payable to Drier, which are now deposited in the registry of the District Court, was collusive and conspiratorial and resulted in Drier acquiring unclean hands, and then contending in his briefs exactly the opposite (as observed by the Court below in its opinion) that Drier acquired unclean hands

by terminating her consent given in the 1941 agreement with the Secretary of the Treasury. But beyond all this, the opinion of the court below shows that petitioner was not prevented from making any and every argument that occurred to her numerous counsel and that Rule 75 (d) was not enforced against her.

## CONCLUSION

This respondent respectfully contends that there is no basis for the granting of certiorari in this case, and he, therefore, ask that the prayers of the petition be denied.

Respectfully submitted,

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